

# BOARD OF ADJUSTMENT MINUTES

DATE: July 23, 2007



1<sup>ST</sup> FLOOR  
NORTH CONFERENCE ROOM  
CITY HALL

Type of Meeting: PUBLIC HEARING

Chairman Paul Smith called a regular meeting of the Board of Adjustment to order at 2:00 p.m. Mr. Smith read the opening statement explaining the functions of the Board of Adjustment. Everyone giving testimony regarding a case before the Board was duly sworn. Notice was previously mailed to all required parties.

## BOARD MEMBERS PRESENT:

Chair - Paul Smith.....X  
Tom Muncy.....X  
Beverly Robinson..... X  
Richard Fort ..... X  
Robert Middlemas..... ABSENT  
Janet Whitworth.....X

CASE	STAFF PRESENTING CASE	GRANTED/DENIED/ CONTINUED
1. 125 Wellington Street	Stuart Rohrbaugh	Granted
2. 1865 Hendersonville Road	Shannon Tuch	Denied
3.		
4.		
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6.		
7.		
8.		

## Additional Information

STAFF PRESENT: Beverly Williams, Stuart Rohrbaugh, Martha McGlohon, Shannon Tuch

**CASE # 1**

**ADDRESS: 125 Wellington Street**

**PETITIONER: Charles, Janice & Davida Falk**

**PIN # 9638.15-62-8812**

**REQUEST:** Petitioner is requesting a variance of Section 7-14-1 (a) (1) of the Unified Development Ordinance in order to construct a detached accessory structure with an accessory apartment at the above referenced property.

**Variances:**

1. Petitioner is requesting a side setback variance of 1.9' from the left side property line in lieu of the minimum required setback of 6'. This request would allow the structure to remain 4.1' from the left side property line.
2. Petitioner is requesting a rear setback variance of 3.2' from the rear property line in lieu of the minimum required setback of 6'. This request would allow the structure to remain 2.8' from the rear property line.

**Background:** An existing two story detached accessory structure is located in the left rear yard area. The structure was never completed. A 21' x 21' "shell" of a building was partially constructed in 1964. The structure is considered non-conforming. It encroaches on both the left side and rear property line. Permit application was submitted last month to finish the building in a way to convert the upstairs into an accessory apartment and the downstairs into residential storage. Permit# 07-3224 was disapproved. The proposed change of use could not occur when the existing building is considered non-conforming. The walls of the existing building are proposed to remain in the same location. The "shell" portion will not expand. A new covered deck is proposed along the right side of the building. The proposed covered deck will be designed to meet the minimum required setback of 6'. Applicant submitted this variance application to seek relief from the minimum setback requirements.

**DISCUSSION:** Stuart Rohrbaugh presented the case to the Board and stated referred to the survey and photos the petitioner submitted for the Boards review. Further Mr. Rohrbaugh stated that the existing detached accessory structure already encroaches within the required side and rear setbacks. There are a number of homes and detached accessory structures in this neighborhood, built around the same time period, that also encroach with a required setback. The "shell" portion of the building will not expand or encroach any further on the side or rear property line. Staff recommends approval of the requested variances.

**Opened Public Hearing: 2:10 p.m.**

**Closed Public Hearing: 2:14 p.m.**

Motion: Tom Muncy moved to grant the requested variances.	2 <sup>nd</sup> By: Beverly Robinson	VOTE:
		5 – 0
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		ABSENT
Beverly Robinson		Aye
Richard Fort		Aye
Janet Whitworth		Aye
The variances were granted.		

CASE # <u>2</u>
ADDRESS: 1865 Hendersonville Road
PETITIONER: Ingles Markets Inc., Agent John Caputo
PIN # 9655 09-15-0411
Case continued on agenda: 5-25-07; 6-25-07; and heard 7-23-07

<p><b>REQUEST:</b> Applicant is requesting variances of Section 7-13-4 (2) ( c) of the Unified Development Ordinance in order to install attached wall signs that exceed the number of signs allowed and the size allowed for a single tenant. As a single tenant, Ingles is permitted up to <u>two</u> attached signs that do not exceed <u>125 square feet total</u>.</p> <p><u>Lot #1 - Ingles Market</u></p> <p>Variance 1: Petitioner is requesting a ‘number of signs’ variance to allow for <u>four</u> signs in lieu of the <u>two</u> signs allowed by the code.</p> <p>Variance 2: Petitioner is requesting 228.5 square feet of sign face on the building which is 103.5 square feet more than the 125 square feet normally allowed by code.</p> <p>Sign #1 – “Ingles” sign a 160 square feet  Sign #2 – “Fresh Foods” at 26.5 square feet  Sign #3 – “American Owned” at 20 square feet  Sign #4 – “Starbucks” at 22 square feet</p> <p>Total Sign face = 228.5 square feet</p>
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<p><u>Lot #2 – Gas Express</u></p> <p>Variance 3: Petitioner is requesting a second ‘number of signs’ variance to allow <u>three</u> signs in lieu of the <u>two</u> signs allowed by code.</p>
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Sign #5 – “The I Market” sign at 31.25 square feet  
Sign #6 – “Gas Express” sign on canopy at 36.6 square feet  
Sign #7 – “Wash Express” sign on car wash at 34.0 square feet

Total sign face = 101.9 square feet (this does not exceed the normal 125 s.f. allowance)

#### BACKGROUND:

Ingles intends to subdivide the larger 19.82 acre tract to gain additional free standing signage for the strip center, Ingles grocery store, and Ingles gas station (see attached); as three separate parcels, three separate free-standing signs would be permitted. This subdivision, while allowing for additional free-standing signage, limits the amount of attached signage to a total of two signs at a maximum of 125 square feet total per lot. As a multi-tenant, Ingles would be permitted a maximum of 1 free-standing multi-tenant sign in addition to attached signage based on the linear frontage of the parcel to be shared amongst the various tenants. Either option is available to the petitioner who has elected to pursue the single tenant status.

With respect to Sign #4 – “Starbucks.” The coffee kiosk located inside the store is not an independent “Starbucks” café and is owned, operated, and staff by Ingles Markets; as such, it cannot be considered a second tenant. The signage proposed is part of a contract agreement between Starbucks and Ingles that allows the Ingles markets to sue and promote the Starbucks product.

Permits for signs #1 and #2 were issued based on the former multi-tenant status and would be conforming if no subdivision were proposed (186.5 square feet total). Because a subdivision may not create or increase a non-conforming situation, a variance for the signage must be obtained before the subdivision can be completed.

**DISCUSSION:** Shannon Tuch presented the case to the Board and stated the petitioner has submitted a minor subdivision which will divide the parcel into three (3) lots. The petitioner is requesting a number of signs variance to install 4 attached signs and a variance to increase the total square feet from the 125 sq. ft. which is allowed by the ordinance to 228.5 square feet. Petitioner is also requesting another number variance of three additional signs for the Gas Express. Currently they have the Ingles sign and the Fresh Foods sign. These existing signs already exceed 125 sq. ft. Adding two additional signs will increase the non-conformity. Staff does not support any of the variances requested based on the fact that the site has very good visibility, and there is no true fiscal hardship. Freestanding signage will be allowed on Hendersonville Road to attract motorist and staff feels that attached signage is for parked motorist.

John Caputo, Agent for Ingles addressed the Board and stated that the existing Ingles store was removed. The new store will also have an i-Market and a Car Wash. Mr. Caputo informed the Board that the new Ingles was considerably larger than the old store and therefore would need additional and larger signage.

The Chairman advised Mr. Caputo that the signs they were requesting due to a growth problem should be taken to the City Council for relief.

John Spake, representative from the Ingles addressed the Board and spoke in favor of the variances requested.

Joe Baxter, (interested citizen) spoke in opposition to the variances requested.

After a lengthy discussion, the Chairman called for a motion.

Opened Public Hearing: 2:15 p.m.

Closed Public Hearing: 2:50 p.m.

Motion: Tom Muncy moved to approve the variances as requested bases on the Board setting a precedent.	2 <sup>nd</sup> By: Paul Smith	VOTE:
		3 -2
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		ABSENT
Beverly Robinson		Nay
Richard Fort		Nay
Janet Whitworth		Aye
The requested variances were denied.		


#### Additional Information

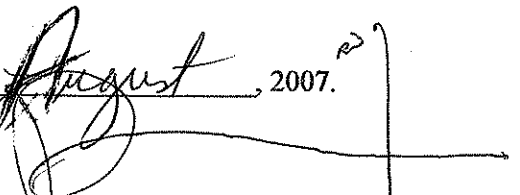
OTHER BUSINESS: The minutes from the June 25, 2007 meeting were approved unanimously. Richard Fort made the motion which was seconded by Tom Muncy.

MEETING:

ADJOURNED: 2:55 p.m.

Read, approved and adopted this 27 day of August, 2007.

  
Beverly Robinson  
Planning Technician

  
Chairman